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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/517,796	12/13/2004	Marc Bernard	REGIM 3.3-046	8927
530 7590 05/07/2007 LERNER, DAVID, LITTENBERG, KRUMHOLZ & MENTLIK 600 SOUTH AVENUE WEST WESTFIELD, NJ 07090			EXAMINER JAGAN, MIRELLYS	
			ART UNIT 2859	PAPER NUMBER
			MAIL DATE 05/07/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/517,796

Applicant(s)

BERNARD ET AL.

Examiner

Mirellys Jagan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 February 2007.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 February 2007 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. The restriction requirement presented in the last Office action, dated 6/7/06, is withdrawn in view of Applicant's amendment to claims 4-12.

Drawings

2. The Replacement drawing sheet correcting figures 1 and 2 was received on 2/8/07 and is approved.

Claim Objections

3. Claims 17, 19, and 21 are objected to because of the following informalities:

There is lack of antecedent basis in the claims for "the longitudinal axis". Appropriate correction is required.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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5. Claims 1-3, 8, 10, and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 5,302,026 to Phillips.

Phillips discloses a sensor comprising:

a fluid intake fitted to a streamlined body;

a duct provided in said streamlined body to enable fluid flow, the duct communicating with the fluid intake; and

a sensing element disposed inside said duct;

wherein the sensor comprises a fixing flange having a bearing surface defining a fixing plane for the sensor; the inlet section of the intake extends so as to define a surface that slopes with respect to a surface perpendicular to the fixing plane, the surface defining a sliding surface for any pieces of ice that may come to bear thereagainst (will do so due to its slope); the inlet section presents an inclination with respect to a section orthogonal to the main flow direction of the fluid; the inlet section defines a sliding surface that is concave; the fluid intake presents an inside section defined by at least one plane surface that communicates with a chamber that opens to the outside and that constitutes a boundary layer suction chamber; the sensor element comprises a ceramic tube having measurement resistive wire wound thereon; and the streamlined body is inclined relative to the fixing plane and presents a longitudinal axis which extends other than perpendicularly relative to said plane (see figure 1, and column 2, lines 56-59).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

8. Claims 4-7, 9, 11-13, and 15-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Phillips.

Phillips discloses a sensor having all of the limitations of claims 4-7, 9, 11-13, and 15-21, as stated above in paragraph 5, and further discloses that the plane surface includes a plurality of suction openings that extend transversely relative to the general flow direction, i.e. perpendicular to the general flow direction, and through the thickness of the wall so as to slope downstream; the sensor comprising a support mandrel carrying the sensing element; and the fluid intake having an inside section defined by a planar surface connected to a surface having a round shape.

Phillips does not disclose the openings being slots that are chevron-shaped; is silent as to the material of the mandrel, and therefore does not disclose the mandrel being made of a thermally insulating ceramic; the angle between the longitudinal axis of the streamlined body and the direction perpendicular to the fluid flow and/or to the fixing plane lies substantially in the

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range 5° to 15°; and the fluid intake having an inside section defined by two substantially planar surfaces extending facing each other and interconnected by surfaces of rounded shape.

However, referring to claims 4-7, 12, 16, 17, and 20, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the sensor of Phillips by changing the shape of the openings and the fluid intake since this is considered to be an obvious modification of the shape or configuration of the openings and fluid intake disclosed by Phillips as the courts have held that a change in shape or configuration is within the level of skill in the art since the particular shape claimed is nothing more than one of numerous shapes that a person having ordinary skill in the art would have been able to provide using routine experimentation based on its suitability for the intended use of the invention. See *In re Dailey*, 149 USPQ 47 (CCPA 1976).

Furthermore, referring to claim 9, the particular type of material used to make the mandrel claimed by Applicant is considered to be the use of a “preferred” or “optimum” material out of a plurality of well known materials that a person having ordinary skill in the art at the time the invention was made would have been able to provide based on the intended use of applicant’s apparatus, i.e., suitability for the intended use of applicant’s apparatus. See *In re Leshin*, 125 USPQ 416 (CCPA 1960), where the courts held that a selection of a material on the basis of suitability for intended use of an apparatus would be entirely obvious.

Lastly, referring to claims 11, 13, 15, 19, and 21, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify the sensor of Phillips by masking the angle between the longitudinal axis of the streamlined body and the direction perpendicular to the fluid flow and/or to the fixing plane in the claimed range since it

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has been held that, where the general conditions of a claim disclosed in the prior art, discovering the “optimum range” involves only routine skill in the art. See *In re Aller*, 105 USPQ 233 (CCPA 1995).

Response to Arguments

9. Applicant's arguments with respect to claims 1-3 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


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11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mirellys Jagan whose telephone number is 571-272-2247. The examiner can normally be reached on Monday-Friday from 11AM to 5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego Gutierrez can be reached on 571-272-2245. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MJ
April 30, 2007



Diego Gutierrez
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